

# ENFORCEMENT OF THE JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS IN RUSSIA: RECENT DEVELOPMENTS AND CURRENT CHALLENGES

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## 1 Introduction

Over the last few years, the issue of Russia's execution of judgments from the European Court of Human Rights (the "Court" or the "ECtHR") has gained pivotal importance not only for Russia itself but also, more generally, for the whole system of human rights protection under the auspices of the Council of Europe. Applications submitted to the Court against Russia make up a large share of the Court's caseload. The survival of the European human rights system, which is already facing a grave crisis due to the overload of the Court, to a great degree, depends on a decrease in the number of applications coming to the Court. This can be most efficiently achieved through the prompt and full execution of judgments that point at systemic domestic problems.

At the same time, a debate on the interplay of the Russian national legal order and the Convention (ECHR) system has recently arisen in the Russian public and legal domain. A legislative bill was proposed granting the Russian Constitutional Court powers to hold that any law the application of which was found by the ECtHR to violate the Convention in a case against Russia, is nevertheless compliant with the Russian Constitution. The bill envisages (so appears to be the perception of the bill's authors) that the State is not therefore bound to change the impugned law. This debate, based to a large extent on the apparent strengthening of the sovereignty principle in the political discourse, is similar to processes taking place in some other European countries. For example, the United Kingdom's parliament

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has for several years been reluctant to implement the ECtRH judgment in the case of *Hirst v. the United Kingdom* (EUROPEAN COURT OF HUMAN RIGHTS, 2005) in which the Court found that a blanket ban on prisoners' voting rights was in violation of the Convention.

The Court is due to deliver judgments in several politically sensitive cases, like the judgment on compensation in recently decided *Yukos v. Russia* (EUROPEAN COURT OF HUMAN RIGHTS, 2009c), and two interstate cases, *Georgia v. Russia (nos. 1 and 2)* (EUROPEAN COURT OF HUMAN RIGHTS, 2009d; 2010b). This only adds to concerns about the future of Russia's execution of the Court's judgments.

Finally, from a standpoint of studying the effects of international law on domestic legal systems, it is crucial to examine how international human rights norms are being implemented in countries with a relatively recent history of democracy and a fragile concept of the rule of law, such as Russia.

The authors will give a brief overview of the approach of the ECtHR to remedies and the framework of supervision of enforcement of its judgments by Member States of the Council of Europe. They will subsequently examine the particular problems that Russia faces with regard to the execution of ECtHR judgments, both as concerns individual and general measures as well as the country's achievements in this respect.

## 2 General remarks on the enforcement of ECtHR judgments in Russia

Before discussing issues specific to the Russian context, several general remarks regarding the system of execution of ECtHR judgments should be made.

According to Article 46(1) of the Convention, Member States of the Council of Europe undertake to "abide by the final judgments of the Court in any case to which they are parties." The legally binding nature of the Court's judgments and the developed machinery of enforcement supervision is a unique feature of European human rights. The Member States of the Council of Europe have, in principle, three obligations following an adverse ruling from the Court: (1) to make payment of compensation, if awarded; (2) if necessary, to take further individual measures in favour of the applicant, that is to put a stop to the violation found by the Court and to place the applicant, as far as possible, into the situation existing before the breach (*restitutio in integrum*), (EUROPEAN COURT OF HUMAN RIGHTS, *Akdivar v. Turkey* (Article 50), 1998, para. 47); and (3) to take measures of a general character in order to ensure non-repetition of similar violations in the future (EUROPEAN COURT OF HUMAN RIGHTS, *Broniowski v. Poland*, 2004, para. 193).

As discussed in more detail below, individual measures may entail, for example, a re-examination of the applicant's case by domestic courts, lifting restrictive measures imposed in violation of the Convention, taking positive administrative steps to enable the full enjoyment of rights by the applicant, releasing the applicant from custody, etc. General measures may not be required in cases where a violation found by the Court is of an isolated or exceptional nature (LAMBERT-ABDELGAWAD, 2008, p. 27). However, where a violation is rooted in deficiencies within the domestic legal order which have the potential of affecting

a large number of persons, the State is required to engage in legislative or policy reform or take other measures to eliminate such a problem and its effects.

The ECtHR system's approach to determining the scope and content of the remedial measures required, following a Convention violation finding, is different to that adopted by another major regional human rights system: namely the Inter-American Court of Human Rights.<sup>1</sup> Relying on the principle of subsidiarity, under which the ECHR is subsidiary to domestic legal orders, the Court has traditionally been reluctant to specify necessary remedial measures other than compensation, in its judgments.<sup>2</sup> This shifts the determination of the particular content of enforcement measures to the Member States, supervised and assisted by the Committee of Ministers (CoM) and, thus, to the political arena.

From an effective execution of judgments standpoint, the Court has often been criticised by other Council of Europe bodies and by academics for this reluctance to specify the remedial measures necessitated by a violation (COUNCIL OF EUROPE, 2000b, para. 5). For example, Steven Greer indicates that it is greatly important that the Court identifies precisely what steps need to be undertaken to comply with its judgments. This is because, if it were to do so, (a) enforcement would be less open to political negotiation within the CoM; (b) it would be easier to monitor execution objectively; and (c) a failure to comply effectively is easier to enforce through the national legal process as an authoritatively confirmed violation (GREER, 2006, p. 160-161).

However, several arguments can be made in support of a different standpoint. The approach to the question of whether remedial measures should be identified in a judgment may differ between individual and general measures. While, as indicated above, the individual measures required to remedy a violation are in many cases straightforward, the remedial measures ensuring non-repetition of violations may require comprehensive reforms. At times, such reforms may not be limited to legislative change, but may also involve, for example, changes in administrative practice, public opinion or the attitudes of State officials to a particular practice. Defining such measures is a lengthy and difficult task that may only be accomplished through a dialogue between various stakeholders (governmental and non-governmental) on both national and international levels. It appears that international judicial proceedings are not a proper forum for such a dialogue. As to the pilot judgment procedure,<sup>3</sup> concern has been expressed that dealing with a complex systemic problem on the basis of a single case may not, in certain situations, allow for an analysis of all aspects of that problem. This runs the risk of inadequate guidance provision on remedial measures to Member States. Moreover, a proper analysis of the factors influencing the underlying problem, and an assessment of how best to eliminate the negative ones, is a lengthy and costly process. This may be difficult for the Court (already limited in resources and struggling to maintain the consistency and coherence of its case-law) to execute in every case.

A final argument for determining the content of general measures through political, rather than judicial, means is that the political process may be instrumental in creating (through dialogue and cooperation with the Committee

of Ministers) a sense of ownership of the measures needed to comply with the judgment at the domestic level. Conversely, imposing measures specified in the Court's judgment on domestic authorities may produce the opposite effect, leading to a rejection of such measures and provoking arguments about the Court's failure to understand the country's politico-legal context. The latter scenario may prejudice the Court's authority.

Turning to the enforcement framework existing in the Council of Europe, Article 46(2) of the Convention provides the Committee of Ministers with powers to supervise the execution of the Court's judgments by States. Generally, for each case (or group of similar cases) the Committee examines the remedial measures suggested by the State, discusses the issue during special human rights meetings of delegates from all Member States, and adopts a final resolution once it is satisfied that the judgment in question is complied with. The Committee has recently decided to engage in more intensive enforcement supervision for particularly important judgments, such as those revealing a complex and systemic problem within the legal system of a Member State, or those requiring urgent individual measures to prevent further harms to the applicant (COUNCIL OF EUROPE, 2011b). This enhanced supervision implies a more proactive approach on the part of the Committee in assisting States to identify the content of remedial measures required and, where necessary, putting more pressure on the State concerned to comply with an adverse judgment swiftly.

Russia ratified the Convention and accepted jurisdiction of the Court on 5 May 1998. Since then the Court has delivered over a thousand judgments finding at least one violation of the Convention by the Russian State (COUNCIL OF EUROPE, 2011a). For the past several years Russia remains one of the principal contributors to the caseload of the Court,<sup>4</sup> along with Turkey, Ukraine and Romania (COUNCIL OF EUROPE, 2010a). Importantly, many applications to the Court stem from unresolved systemic or structural problems existing in Russian law and/or policy. These include, *inter alia*, violations of the principle of legal certainty through the supervisory review of civil and criminal cases; delayed enforcement of domestic judgments on social security payments to be made from the budget; harsh conditions of detention amounting to inhuman or degrading treatment; and lack of effective investigation into cases of police brutality. Russia's full and swift compliance with the Court's judgments is of pivotal importance not only to ensuring the enjoyment of the rights guaranteed under the Convention to anyone within the jurisdiction of this State, but also to alleviating the crisis currently facing the Convention system and to securing its effective functioning in the future.

While Russia has a decent record of making compensation payments within the deadlines set by the Court, and also complies with the requirement to pay default interest where delay has occurred (COUNCIL OF EUROPE, 2011b), its implementation of individual and, especially, general measures has been subject to criticism. For example, in the most recent report on implementation from the special rapporteur of the Parliamentary Assembly of the Council of Europe, Russia is listed among those States facing substantial implementation problems (COUNCIL OF EUROPE, 2010f).

The following two sections of this article examine the challenges to and achievements of the enforcement of ECtHR judgments by the Russian authorities as concerns individual and general measures, respectively.

### 3 The implementation of individual measures: the re-opening of domestic proceedings

One of the challenges to the implementation of individual measures in Russia can be found in the process of re-examination of national court cases.

As outlined above, the purpose of individual measures is to achieve *restitutio in integrum* (HARRIS; O'BOYLE; WARBRICK, 2009, p. 875). The re-examination or re-opening of court proceedings is an important means "to ensure that the violation has ceased and that the injured party is put, as far as possible, in the same situation as that party enjoyed prior to the violation of the Convention," (COUNCIL OF EUROPE, 2006b). According to Recommendation Rec(2000)2 of the Committee of Ministers, the re-opening of court proceedings "has proved the most efficient, if not the only, means of achieving *restitutio in integrum*," in particular, where:

- (i) the injured party continues to suffer very serious negative consequences because of the outcome of the domestic decision at issue, which are not adequately remedied by the just satisfaction and cannot be rectified except by re-examination or reopening, and*
  - (ii) the judgment of the Court leads to the conclusion that*
    - (a) the impugned domestic decision is on the merits contrary to the Convention, or*
    - (b) the violation found is based on procedural errors or shortcomings of such gravity that a serious doubt is cast on the outcome of the domestic proceedings complained of.*
- (COUNCIL OF EUROPE, 2000a).

It is clear that the enforcement mechanism under the Convention can work effectively only where the Member States' laws provide for the re-examination of individual cases in order to remedy the violations found by the ECtHR.

In Russia, the re-opening of court proceedings is governed by three different codes of procedure. Generally speaking, the Russian system of courts includes constitutional courts, courts of general jurisdiction and commercial courts.<sup>5</sup> Constitutional courts (or charter courts, as they are named in some of the constituent entities, or regions, of Russia) decide whether various laws and regulations comply with the Constitution of the Russian Federation or, depending on jurisdiction of a specific court, the Constitution (Charter) of Russia's constituent entity. Courts of general jurisdiction hear all criminal disputes and civil disputes in which at least one of the parties is a natural person, unless a dispute is specifically referred to the jurisdiction of a commercial court. Commercial courts hear commercial cases, specifically economic disputes between parties that are legal entities or individual entrepreneurs. The procedure in courts of general jurisdiction is governed by the Civil Procedure Code and the Criminal Procedure Code, whereas the procedure in commercial courts is governed by the Commercial Procedure Code.

Although the re-opening of different types of court proceedings has certain

common features, re-opening further to an ECtHR judgment is not regulated in a uniform manner. Most importantly, unlike the Commercial Procedure Code and the Criminal Procedure Code, the Civil Procedure Code does not expressly provide a ground for the re-opening a case on the basis of an ECtHR judgment. As a result, the Russian courts had been dismissing requests to re-open court proceedings, until the matter was raised by three applicants in the Constitutional Court.

In the cases of two of the applicants, the ECtHR found *inter alia* violations of Article 6(1) of the Convention in connection with a lack of legal certainty in quashing judgments relating to the applicants before domestic courts by way of supervisory review (*nadzor*) (EUROPEAN COURT OF HUMAN RIGHTS, *Kot v. Russia*, 2007; EUROPEAN COURT OF HUMAN RIGHTS, *Kulkov and others v. Russia*, 2009a). Supervisory review is a procedure exercised by higher courts for quashing or altering judicial decisions that have become legally binding. It should be noted that the Russian supervisory review procedure in civil proceedings has long been a matter of concern for the ECtHR and the Committee of Ministers. Russia has been recommended “to give priority to the reform of civil procedure” to restrict the use of the supervisory review procedure “through stricter time-limits for *nadzor* applications and limitation of permissible grounds for this procedure so as to encompass only the most serious violations of the law,” as well as limitation of “the number of successive applications for supervisory review that may be lodged in the same case” amongst others (COUNCIL OF EUROPE, 2006a).

In the third applicant’s case, the lay judges who, along with a professional judge, heard the applicant’s case in the national court, were appointed in violation of applicable law. As a result, the ECtHR found a violation of Article 6(1) of the Convention in light of the fact that the composition of the bench could not have been regarded as a “tribunal established by law” (EUROPEAN COURT OF HUMAN RIGHTS, *Fedotova v. Russia*, 2006).

In view of the shortcomings found in national proceedings by the ECtHR in these cases, they appear to fall in the category of court proceedings where a re-examination would be justified. However, the Russian courts dismissed the applicants’ requests by reference to a lack of express provision in the Civil Procedure Code to allow for a re-opening to remedy ECHR violations.

On 26 February 2010, the Constitutional Court issued a judgment finding that Russia’s obligations to enforce ECtHR judgments under the Convention include the adoption of individual and general measures, where required (RUSSIA, 2010c). A person whose rights were found by the ECtHR to be breached should have an opportunity to have his or her case re-examined by the national courts. Therefore, the lack of a provision in the Civil Procedure Code could not justify the refusal to re-open proceedings, especially considering that the Commercial Procedure Code did provide for the possibility of such a re-opening in commercial proceedings. There is no objective reason for the discrepancies between the Commercial Procedure Code and the Civil Procedure Code in this respect. The courts of general jurisdiction should have applied relevant provisions of the Commercial Procedure Code by analogy when deciding on the issue of re-opening proceedings.



Furthermore, the Constitutional Court stated that the implementation of national procedures ensuring that national judicial decisions were re-examined in view of violations of the Convention would be an appropriate general measure in this situation. Therefore, the Civil Procedure Code should be amended accordingly. A bill amending the Civil Procedure Code was submitted to the State Duma shortly after this ruling (RUSSIA, 2010b). Regrettably, this bill has not yet been adopted.

However, there is yet another concern connected to the somewhat restrictive wording of the suggested amendment in the bill (RUSSIA, 2010b). The wording of the amendment is based on the similar wording used in the Commercial Procedure Code. According to this provision, the re-opening of court proceedings is allowed when the application to the ECtHR and the Convention violation directly arises out of the domestic case that is to be re-examined.

It follows from the clarifications of the Supreme Commercial Court, that an application for review of a court decision based on an ECtHR judgment may be filed with a competent commercial court by a person who participated in the relevant domestic proceedings or any other person whose rights and/or obligations were affected by the relevant court decision (RUSSIA, 2007).

On its face, the existing legislative formulation appears to be sufficient to remedy violations of the Convention identified by the ECtHR. However, there is a risk that only rather straightforward situations would be covered. For example, some major disputes can be complex involving various interrelated court proceedings. An attempt to re-open any of those proceedings further to the delivery of an ECtHR judgment might prove to be problematic in light of the requirement for a strict connection between the ECtHR judgment and national proceedings. This concern is supported by court practice. There are not many reported cases of commercial courts that address the issue of the re-opening of proceedings further to an ECtHR judgment. However, available court practice shows that Russian commercial courts are somewhat reluctant to re-open the proceedings on that ground (RUSSIA, 2008b, 2009c). Nevertheless, the Constitutional Court's judgment and the Russian authorities' willingness to follow the recommendations of the Committee of Ministers is generally a very welcome development.

#### **4 The implementation of general measures**

As noted above, the aim of a general measure is to ensure non-repetition of similar violations by a Member State in the future. Thus, any general measure required from a State is most likely to entail the need to amend its domestic legislation or adopt a complex of other measures of a general character in order to eliminate a particular problem. Overall, the Russian authorities have made genuine attempts to comply with most ECtHR judgments relating to general measures as well as with recommendations from the Committee of Ministers. However, a recent disagreement between the ECtHR and the Russian Constitutional Court has posed one of the biggest challenges to the whole system of enforcement of ECtHR judgments with respect to Russia. Furthermore, as the Russian example vividly

shows, elimination of legislative deficiencies in many instances does not mean elimination of a systemic problem, as such problems are often rooted in entrenched day-to-day practices of Russian state authorities.

In this section of the article, the authors first assess the mechanisms and procedures that exist in Russia to ensure the execution of judgments as concerns general measures. Examples of cases in which general measures have been successfully implemented will then be analysed. Finally, the recent tensions between the Constitutional Court and the ECtHR are examined and more problematic instances of implementation are discussed.

#### *4.1 Procedures and mechanisms for the implementation of general measures*

One area of concern, regarding the enforcement of general measures in Russia, are the procedures and mechanisms within the executive branch and the parliament for the effective and swift implementation of reforms necessary to comply with adverse judgments of the Court.

In 2008, the Committee of Ministers recommended that Member States set up bodies (or appoint officials) that would coordinate enforcement processes; create appropriate mechanisms for establishing dialogue and transmission of information between the Committee and domestic authorities; and develop effective synergies between various authorities at the national level to ensure enforcement of the Court's judgments (COUNCIL OF EUROPE, 2008a). Similarly, the Parliamentary Assembly has on numerous occasions indicated that national parliaments have great potential to ensure that the judgments of the Court are implemented. They may do so by exercising parliamentary scrutiny over the actions of the executive in this respect and putting pressure on government where it fails to act. Moreover, they can initiate legislative reform where it is necessary to comply with judgments, and systematically verify the compatibility of draft and existing legislation with Convention norms. To that end, the Assembly recommends that parliaments establish "structures that would permit the mainstreaming and rigorous supervision of their international human rights obligations" (COUNCIL OF EUROPE, 2011c, para.6.6).

In Russia, a coordinating role is entrusted to the Office of the Agent of the Government before the Court, which is a division of the Ministry of Justice (MoJ). Its functions include making recommendations for the improvement of Russian legislation and practice, and drafting legislative bills where necessary, as well as ensuring cooperation between various State authorities for the enforcement of the Court's judgments (RUSSIA, 1998). However, in practice this office, which is also tasked with representing Russia in all cases before the Court and ensuring that just satisfaction is paid in good time, lacks the resources and political weight to engage in a comprehensive coordination of the execution of judgments as concerns general measures. It also appears to lack enforceable powers to ensure meaningful cooperation between all the relevant State authorities and to put pressure on those offices or officials unwilling to cooperate.



As for parliamentary involvement in the enforcement process, according to a recent report issued by the Parliamentary Assembly, Russia belongs to a group of countries that have adopted a horizontal approach to the way its parliament deals with human rights problems. Thus, there is no special committee with a specific human rights mandate within the parliament, and human rights are implied to be a cross-cutting issue that should be taken into account by every committee (COUNCIL OF EUROPE, 2011c, para. 28). However, the role of the Russian parliament in the execution of the Court's judgments remains underdeveloped. It appears to be limited to the adoption of legislation intended to remedy violations of the Convention when such legislation is proposed. Although there is a special centre within the Council of the Federation (the upper chamber of the parliament) tasked with monitoring legislation and its application with a focus on human rights issues, it has no specific mandate to take into account the judgments of the Court while performing its functions (RUSSIAN, 2008a). Furthermore, Russia's compliance with its international human rights obligations rarely becomes a subject of discussion during the annual reporting sessions of the Government before the parliament.<sup>6</sup> During the most recent such session, held in April 2011, the issue of enforcement of the Court's judgments was not raised at all (PUTIN, 2011).

This paper is not intended to provide a detailed analysis of the root-causes for the lack of parliamentary involvement in the execution process. Nevertheless, two factors contributing to this situation should be highlighted. These are namely, the lack of a procedure whereby the parliament would regularly be informed of adverse ECtHR judgments and the enforcement requirements of the Committee of Ministers; and the lack of a specific obligation on the Government to report to the parliament about its compliance with its international human rights obligations.

Finally, a recent development concerning procedures for the enforcement of judgments deserves attention. In May 2011, a Russian presidential decree, *On the monitoring of the application of law in the Russian Federation*, was adopted (RUSSIA, 2011c). It provides that one of the goals of such monitoring is to ensure the enforcement of those judgments of the ECtHR which require legislative change. Although the methodology for conducting such monitoring activities is yet to be developed, some features of the monitoring framework are already determined. The Decree provides that the MoJ will assume a coordinating role in the monitoring process: input will be sought from various State authorities (including the judiciary) as well as civil society; deadlines for the completion of monitoring should be set yearly; the MoJ will accumulate all proposals and information submitted to it and report to the President, making suggestions as to legislative or other changes required; the results of monitoring will be published.

In the authors' opinion, the Decree should be regarded as a positive development in meeting the recommendations of the Committee of Ministers discussed above as well as remedying the shortcomings of the previous system. It remains to be seen, however, what particular steps will be taken in order to implement this Decree and how effective the monitoring process will be in delivering practical results.

#### 4.2 *Speedy enforcement of domestic courts' judgments: Burdov v. Russia (no. 2)*

An issue that arose soon after Russia joined the Council of Europe is the mass non-enforcement of final domestic judgments delivered against the State and its entities due to lack of budgetary funds and the proper coordination of activities between various State bodies. This has proven to be a systemic problem, not only for Russia, but also for some other Eastern European/post-Soviet countries. Before 2009, there were sometimes hundreds of non-enforcement applications pending before the ECtHR with respect to Russia. These consistently gave rise to the finding of a violation of the right to a trial within a reasonable time (Article 6, ECHR) and the right of peaceful enjoyment of one's possessions (Article 1, Protocol No. 1 to the ECHR) (COUNCIL OF EUROPE, 2009a). While the amounts awarded under such unenforced domestic judgments could be as small as EUR 100, it took domestic authorities several years to complete their enforcement, with no compensation for such delays being guaranteed at the domestic level. As a result, the ECtHR applied the pilot judgment procedure in the case of *Burdov v. Russia (no. 2)* (EUROPEAN COURT OF HUMAN RIGHTS, 2009b). This case addressed Russia's ongoing failure to honour judgments in respect of which no effective domestic remedies were available to the parties concerned.

In its judgment of 2009, the ECtHR explicitly ordered that Russia set up such a remedy within six months from the date on which the judgment became final (by 4 November 2009) and grant "adequate and sufficient redress" by 4 May 2010 to all persons in the applicant's position in the cases lodged with the Court before the delivery of the pilot judgment (EUROPEAN COURT OF HUMAN RIGHTS, *Burdov v. Russia (no. 2)*, 2009b, para. 141, 145).

Although the deadline of 4 November 2009 indicated by the Court was eventually missed by the Russian State, at the end of 2009 the Committee of Ministers noted, with satisfaction, the "efforts deployed within the special inter-ministerial commission set up with the participation of the Presidential Administration, which resulted in the preparation of draft laws setting up a domestic remedy" and that "these draft laws were subject to consultations with the Council of Europe's Department for the execution of the judgments of the European Court" (COUNCIL OF EUROPE, 2009b).

The new Russian law on compensation, the "Law on Compensation," went into effect on 4 May 2010. This law enables claims for compensation based on a violation of the right to a fair trial, and to enforcement, within a reasonable time. It is applicable to domestic judgments, awarding any amount to be recovered from national budgets at various levels. Such claims may be brought at any time prior to the end of the enforcement proceedings but not earlier than six months after the statutory time-limit for enforcement expires, and no later than six months after the enforcement proceedings have been terminated. The compensation awarded is not dependent on the establishment of fault of any competent authorities responsible for delayed enforcement (RUSSIA, 2010a).

Those applicants who lodged their applications with the Court prior to the delivery of the judgment in *Burdov (no. 2)* obtained the right to bring proceedings under the new law within six months of its entry into force. Within the past year, the ECtHR has declared a number of cases of the same nature lodged by Russian individuals inadmissible with reference to the remedy provided for by the new Law on Compensation. The Court indicated its satisfaction with this remedy, in particular, in respect of the amounts to be awarded under the new law. However, it expressed its concern about the hypothetical situation in which the Russian State might fail to honour the new judgments:

*The Court is mindful that an issue may subsequently arise whether the new compensatory remedy would still be effective in a situation in which the defendant State authority persistently failed to honour the judgment debt notwithstanding a compensation award or even repeated awards made by domestic courts under the Compensation Act. That was indeed a hypothesis suggested by the applicants (see paragraph 14 above), but the Court does not find it appropriate to anticipate such an event, nor to decide this issue in abstracto at the present stage.*

(EUROPEAN COURT OF HUMAN RIGHTS, *Nagovitsyn and Nalgiyev v. Russia*, 2010c, para. 35)

In June 2010 the Committee of Ministers “welcomed the Russian authorities’ adoption of the reform to introduce the remedy for non-enforcement or delayed enforcement of domestic judicial decisions” and “strongly encouraged the Russian authorities, particularly the higher judicial bodies, to take any necessary steps to ensure the coherent application of the reform in accordance with the requirements of the Convention” (COUNCIL OF EUROPE, 2010b). Monitoring of the implementation of the new law is ongoing. Overall, the adoption of the Law on Compensation and the case of *Burdov (no. 2)* as a whole are an example of successful cooperation between Russia and the Convention institutions on the reform of Russian domestic legislation.

#### 4.3 *Another story of success: Shtukaturov v. Russia*

Another example of successful cooperation that is worth mentioning under the head of general measures, took place in connection with the case *Shtukaturov v. Russia* (EUROPEAN COURT OF HUMAN RIGHTS, 2008). The judgment, which became final in June 2008, concerned issues of judicial deprivation of legal capacity in the absence of the person concerned and involuntary admission to a psychiatric hospital. In finding a violation of the applicant’s right to respect for his private life (Article 8, ECtHR), the Court indicated that the standards existing in Russia in regard to this particular matter differed from those adopted at the European level:

*The Russian Civil Code distinguishes between full capacity and full incapacity, but it does not provide for any “borderline” situation other than for drug or alcohol addicts. The Court refers in this respect to the principles formulated by Recommendation*

*No. R (99) 4 of the Committee of Ministers of the Council of Europe, cited above in paragraph 59. Although these principles have no force of law for this Court, they may define a common European standard in this area. Contrary to these principles, Russian legislation did not provide for a “tailor-made response.*

(EUROPEAN COURT OF HUMAN RIGHTS, 2008).

Although there were no general measures indicated by the Court in its judgment, at the end of 2008 the Committee of Ministers noted that the relevant provisions of Russian law on the incapacity of adults had not been modified. It has requested that Russian authorities initiate reform of those provisions criticised by the Court and accelerate the process of reform concerning the placement of persons of unsound mind into psychiatric institutions (COUNCIL OF EUROPE, 2008b).

In just a few months, the Russian Constitutional Court considered an application lodged by Mr. Shtukaturov and others to challenge the compliance of the relevant provisions of Russian law with the Russian Constitution and agreed with the applicant (RUSSIA, 2009b). The said provisions were declared to be incompatible with the Russian Constitution and discontinued with immediate effect. Soon after the judgment was delivered by the Constitutional Court, relevant amendments to the legislation had been initiated by the Russian Parliament. These were finalized, and entered into force in 2011 (RUSSIA, 2011b).

The case of Shtukaturov is particularly illuminating to the role of the Russian Constitutional Court. In this case, the Constitutional Court essentially agreed with the position of the ECtRH and the Committee of Ministers. However, as we will show below, this is not always the case.

#### *4.4 Perceived systemic clash between the European human rights system and the Russian Constitution*

The first ever case in which the European Court of Human Rights disagreed with the position of the Russian Constitutional Court is relatively recent (ZORKIN, 2010).

The ECtHR adopted its judgment in *Kostantin Markin v. Russia* on 7 October 2010 (EUROPEAN COURT OF HUMAN RIGHTS, 2010d). This judgement is still not in force as the case was referred to the Grand Chamber, which is still to deliver its judgment.<sup>7</sup>

In this case, the Court found a provision of Russian law prohibiting the granting of parental leave to military servicemen, unlike their female counterparts, to be discriminatory under Article 14 of the Convention (in combination with Article 8) (EUROPEAN COURT OF HUMAN RIGHTS, *Konstantin Markin v. Russia*, 2010d).

In this specific case, the applicant brought concurrent proceedings before the Russian Constitutional Court to challenge the compatibility of the relevant domestic provisions with the Russian Constitution, which also prohibits discrimination. However, the Constitutional Court found the existing provisions to be compatible with the Russian Constitution. In reaching its conclusion, the Constitutional Court referred to the essence of military service as:

*A special type of public service which ensures the defence of the country and the security of the State, it is therefore performed in the public interest. Persons engaged in military service exercise constitutionally important functions and therefore possess a special legal status which is based on the necessity for a citizen of the Russian Federation to perform his duty and obligation in order to protect the Fatherland.*

[...]

*Under section 11 § 13 of [the Military Service Act] parental leave is granted to female military personnel in accordance with the procedure specified in federal laws and regulations of the Russian Federation. A similar provision is contained in section 32 § 2 of the Regulations on military service, which also provides that during parental leave a servicewoman retains her position and military rank.*

[...]

*The law in force does not give a serviceman the right to three years' parental leave. Accordingly, servicemen under contract are prohibited from combining the performance of their military duties with parental leave. This prohibition is based, firstly, on the special legal status of the military, and, secondly, on the constitutionally important aims justifying limitations on human rights and freedoms in connection with the necessity to create appropriate conditions for efficient professional activity of servicemen who are fulfilling their duty to defend the Fatherland.*

(RUSSIA, 2009a)

In addressing the issue of general measures in the case of Markin, the ECtHR stated as follows:

*67. It has been the Court's practice, when discovering a shortcoming in the national legal system, to identify its source in order to assist the Contracting States in finding the appropriate solution and the Committee of Ministers in supervising the execution of judgments [...]. Having regard to the problem disclosed in the present case, the Court is of the opinion that general measures at national level would be desirable to ensure effective protection against discrimination in accordance with the guarantees of Article 14 of the Convention in conjunction with Article 8. In this connection, the Court would recommend that the respondent Government take measures, under the supervision of the Committee of Ministers, with a view to amending section 11 § 13 of the Military Service Act and the Regulations on military service, enacted by Presidential Decree No. 1237 on 16 September 1999, to take account of the principles enunciated in the present judgment with a view to putting an end to the discrimination against male military personnel as far as their entitlement to parental leave is concerned.*

(EUROPEAN COURT OF HUMAN RIGHTS, *Konstantin Markin v. Russia*, 2010d).

While, notably, the case before the ECtHR has not yet resulted in a final judgment of the Grand Chamber, the Chamber judgment of the Court has had a

significant impact on the position of Russian legislative and judicial authorities, particularly with regard to the role of the ECtHR vis-à-vis the role of the Russian Constitutional Court. This has, most recently, resulted in an ambiguous draft law whose consequences are not easy to predict.

#### **4.4.1 Reaction of Russian and Council of Europe officials to the ECtHR Chamber judgment in the case of Konstantin Markin**

The Chairman of the Russian Constitutional Court, Judge Zorkin, initiated a general discussion where he formulated “the limits to flexibility” of Russia on the international arena. He spoke widely of the primacy of the Russian Constitution (and consequently, the judgments of the Constitutional Court) over any international court’s judgments (ZORKIN, 2010). He stated: “The Strasbourg Court is competent to indicate errors in legislation to countries, but in the event where judgments of the ECtHR are directly contradictory to the Russian Constitution, the country must follow its national interests.” (ZORKIN, 2010).

Zorkin referred to the argument often adduced by the ECtHR itself to the effect that domestic authorities are better placed to understand the needs of their society. He concluded that, unlike international courts, Russia should have priority in assessing what constitutes the public interest (ZORKIN, 2010). According to the position posited by the Russian President, and discussed since October 2010 to the present (August 2011), Russia has never delegated such a portion of its sovereignty that would allow any international court to adopt decisions amending Russian law<sup>8</sup> (MEDVEDEV, 2010).

Such a position has attracted serious criticism from the Council of Europe: the Secretary General has responded to the effect that human rights enjoy priority over national law, and that any judgment of the ECtHR which identifies an incompatibility of national law with the European Convention must be modified (JAGLAND, 2011). At the same time, the Russian President has recently promised that Russia will comply even with judgments of international courts that are excessively political (MEDVEDEV, Dmitry, 2011).

#### **4.4.2 Most recent Russian legislative proposal purporting to extend the powers of the Constitutional Court**

In June 2011, the Acting Chairman of the upper house of the Russian Parliament introduced a bill that has been the subject of the most active debate in June and July 2011 (RUSSIA, 2011e).

In essence, the proposed bill imposes on all Russian courts an obligation to refer any case to the Constitutional Court if the court concludes that a law to be applied in the particular case is incompatible with the Russian Constitution. Such referrals are to be made particularly where an international human rights body has adopted a judgment stipulating the violation of an international treaty by the Russian Federation, stemming from the application of a law that does not correspond to that international treaty. Similarly, in examining any issue



on remedying a human rights violation in accordance with a judgment of an international human rights body, any Russian court must refer the case to the Constitutional Court if it concludes that such a judgment of an international body hinders the application of a law that does not contradict the Russian Constitution. Such a referral should request the Constitutional Court to confirm the compatibility of the law with the Constitution. In addition, an individual obtains the right to request the Constitutional Court to verify the compatibility of a certain legislative act with the Constitution following the adoption of a judgment by an international human rights body. This right is held by an individual who believes that such a legislative act should not be applied due to the adoption of such a judgment by an international human rights body, or conversely, should remain applicable, such a judgment notwithstanding (RUSSIA, 2011e). The bill thus implies that, hypothetically, a situation may arise whereby the Constitutional Court could declare a Russian law to be compatible with the Constitution notwithstanding an ECtHR judgment identifying it as being in violation of the Convention.

Following heated discussion on this bill in June and July 2011, the hearing of this legislative proposal was rescheduled for the autumn. There are good chances that the wording of the bill will be significantly revised; it therefore is too early to give any detailed analysis of the proposed bill. However, a number of comments may be made.

Russia has been, and remains a party to the Vienna Convention on the Law of Treaties. As such it is bound by Article 27.<sup>9</sup> No action undertaken domestically can change this provision of the Vienna Convention, which essentially means that the clash between the ECtHR and the Russian Constitutional Court is not really a clash. The two bodies function in two “parallel worlds” with the ECtHR adjudging on matters of compatibility with the Convention, and the Constitutional Court adjudging on matters of compatibility with the Russian Constitution. Furthermore, as international law has a direct application in Russia pursuant to that same Constitution (Article 15(4)), a judgment of the Constitutional Court cannot affect the binding nature of ECtHR judgments.

Certain confusion in Russian academic circles stems from the fact that the ECtHR issues judgments, that is case law, while Russia has predominantly been a civil law jurisdiction, with precedents having no significant force within its boundaries until recently. The arguments adduced by the proponents of that position would be as follows: if there is a conflict between an international treaty and domestic law (excluding the Constitution), it is indeed an international treaty that takes priority. However, if it is an inter-state judicial body that adopts a decision indicating the incompatibility of a domestic provision with an international agreement, it is necessary to additionally analyse such a decision, taking into account the priority of the Russian Constitution in the domestic legal order. This need may eventually lead to the application of domestic law rather than international law (RUSSIA, 2011d).

There is an obvious error in this reasoning. This stems from Article 19 of the European Convention, which entrusts the European Court with the function “[t]

o ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto” (COUNCIL OF EUROPE, 1950). What raises concern, is that such arguments are now adduced by the State Duma, the lower house of the Russian Parliament; that is, the country’s principal legislator (RUSSIA, 2011d).

#### *4.5 Day-to-day practices: impossible solution?*

The reason that finding a proper legislative solution does not necessarily ensure compliance with Convention standards can best be illustrated by the situation within the domain of Russian criminal proceedings connected to the issue of police brutality. This is a very common problem in the Russian Federation. This area is also one of the better examples of the cooperation of the Russian authorities with the Council of Europe: the State is willing, but, unfortunately, it is not very successful.

The current Russian Criminal Procedure Code is reported to contain only one major deficiency: it does not secure access of claimants to investigations. In every other respect, the Code stands up quite well to the expectations of the European human rights institutions. However, the procedure for investigation of brutality complaints is still as badly ineffective as it was several years ago (COUNCIL OF EUROPE, 2010c). The problem thus lies within the practical domain of the day-to-day functioning of law enforcement bodies rather than within the Russian legislative set-up. In a report to the Committee of Ministers, a group of Russian NGOs has offered the following reasons for the inefficacy of investigation procedures in this regard:

- a) lack of institutional and personal independence of the investigators;*
- b) existing professional evaluation system pushing investigators to work to secure high quantitative indices at the expense of the quality of investigation;*
- c) lack of resources needed for investigators;*
- d) inefficiency of control over investigators*

(COUNCIL OF EUROPE, 2010c).

At the same time, according to the Russian authorities, who submitted a publicly available communication on this issue to the Committee of Ministers in November 2010, a number of steps were undertaken by the State in 2009/10 to ensure a higher level of professional training for members of the police, including specific steps in the area of professional ethics and discipline (COUNCIL OF EUROPE, 2010e).

Recently, the Russian government engaged in a major reform of the police service and adopted a new law, “On the Police” (RUSSIA, 2011a). However, this is once again a legislative reform, which will not necessarily entail the effective changes on the ground. Hopefully, the measures undertaken by the Russian Government in this area will be successful.

## 5 Conclusion

What can definitely be foreseen is that the Convention system will serve as a “litmus test” to the outcome of any pending reform touching upon human rights issues in Russia. If the volume of analogous cases lodged with the Court on a given matter decreases, the reform is ultimately a success. If the volume of cases does not decrease, then the reform is a failure and will require further efforts.

Considering the Convention system as a whole, one must conclude that it is the perfect tool for a country like Russia exactly for this reason: it allows any unresolved issue to bounce back and reveal itself in the practice of the ECtHR; any reform that purports to remain solely on paper therefore has no long term prospect of success. Again, for exactly this reason, the ECtHR together with the Committee of Ministers is an extremely powerful instrument. It appears to be of utmost importance that this instrument, both in its judicial and political dimension, is based on the defence and promotion of human rights and the rule of law.

Focusing specifically on Russia within the Convention system, one shall remember its long history, spanning centuries, throughout which the inherent problem of the enforcement of law domestically has always existed.<sup>10</sup>

In our view, if used wisely, the Convention mechanisms will enable Russia to do the “impossible”: to bring its legal system to the level of international standards, a feat which it has not yet been able to accomplish. However, this aim will always need to be balanced against the anxiety shown by the Russian authorities regarding the possible misuse of these powerful instruments to exert excessive political pressure.

We would like to conclude by citing one of the most recent judgments of the ECtHR in which it explicitly outlines how and to what extent the Court upholds this position and understands the need for such a balance:

*It is primordial that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights. This Court is concerned with the supervision of the implementation by Contracting States of their obligations under the Convention. The rule of exhaustion of domestic remedies is therefore an indispensable part of the functioning of this system of protection. (...) The Court cannot emphasise enough that it is not a court of first instance; it does not have the capacity, nor is it appropriate to its function as an international court, to adjudicate on large numbers of cases which require the finding of basic facts or the calculation of monetary compensation – both of which should, as a matter of principle and effective practice, be the domain of domestic jurisdictions.*

(EUROPEAN COURT OF HUMAN RIGHTS,  
*Demopoulos and Others v. Turkey*, 2010a)

## REFERENCES

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### Bibliography and Other Sources

- CAVALLARO, J.; BREWER S.E. 2008. Reevaluating Regional Human Rights Litigation in the Twenty-First Century: The Case of the Inter-American Court. *The American Journal of International Law*, Washington DC, v. 102, n. 4, p. 768-827.
- COUNCIL OF EUROPE. 1950. *European Convention on the Protection of Human Rights and Fundamental Freedoms*. 4 Nov.
- \_\_\_\_\_. 2000a. Committee of Ministers. *Recommendation Rec (2000)2 of the Committee of Ministers to Member States on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights*. Rec (2000)2E, 19 Jan.
- \_\_\_\_\_. 2000b. Parliamentary Assembly. *Execution of judgments of the European Court of Human Rights*. Explanatory memorandum, Doc. 8808, 12 July.
- \_\_\_\_\_. 2006a. Committee of Ministers. *Interim Resolution ResDH (2006) concerning the violations of the principle of legal certainty through the supervisory review procedure (“nadzor”) in civil proceedings in the Russian Federation*. ResDH (2006), 8 Feb.
- \_\_\_\_\_. 2006b. Committee of Ministers. *Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements*. CM/Del/Dec(2006)964/4.4/appendix4E, 10 May, Rule 6(2)(b).
- \_\_\_\_\_. 2008a. Committee of Ministers. *Recommendation CM/Rec(2008)2 of the Committee of Ministers to Member States on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights*. CM/Rec(2008)2, 6 Feb.
- \_\_\_\_\_. 2008b. Committee of Ministers. *Decisions adopted at 1043rd DH meeting*, 2-4 Dec.
- \_\_\_\_\_. 2009a. Committee of Ministers. *Decisions adopted at 1072nd DH meeting*, 1-3 Dec.
- \_\_\_\_\_. 2009b. Committee of Ministers. *Interim Resolution CM/ResDH (2009) concerning the execution of the pilot judgment of the European Court of Human Rights in the case Burdov No. 2 against the Russian Federation relative to the failure or serious delay in abiding by final domestic judicial decisions delivered against the state and its entities as well as the absence of an effective remedy*, ResDH (2009), 7 Dec.
- \_\_\_\_\_. 2010a. European Court of Human Rights. *50 Years of Activity*. European Court of Human Rights. Some Facts and Figures. Apr.
- \_\_\_\_\_. 2010b. Committee of Ministers. *Decisions adopted at the meeting 1086th DH meeting*, 3 June.
- \_\_\_\_\_. 2010c. Committee of Ministers. *Communication from a group of the NGOs in the Mikheyev group of cases against the Russian Federation*, DH-DD(2010)385E, 1 Sept.

- \_\_\_\_\_. 2010d. Committee of Ministers. **Supervision of the execution of judgments and decisions of the European Court of Human Rights: implementation of the Interlaken Action Plan – Modalities for a twin-track supervision system**, CM/Inf/DH(2010)37, 6 Sept.
- \_\_\_\_\_. 2010e. Committee of Ministers. **Communication from the Russian authorities in the Mikeyev group of cases against the Russian Federation (Application No. 77617/01)**, DH-DD(2010)591E, 24 Nov.
- \_\_\_\_\_. 2010f. Parliamentary Assembly. **Report on the implementation of judgments of the European Court of Human Rights**, Doc. 12455, 20 Dec.
- \_\_\_\_\_. 2011a. European Court of Human Rights. **Country fact sheets. 1959-2010**. Mar.
- \_\_\_\_\_. 2011b. Committee of Ministers. **Supervision of the execution of judgments of the European Court of Human Rights**. 4th Annual report. Apr.
- \_\_\_\_\_. 2011c. Parliamentary Assembly. **National parliaments: guarantors of human rights in Europe**, Resolution 1823 (2011), 23 June.
- GREER, S. 2006. **The European Convention on Human Rights. Achievements, Problems and Prospects**. First edition. New York: Cambridge University Press.
- HARRIS, D.; O'BOYLE, M.; WARBRICK, C. 2009. **Law of the European Convention on Human Rights**. 2nd ed. Oxford: Oxford University Press.
- JAGLAND, T. 2011. **Speech at the St Petersburg International Legal Forum**. Official web-site of the President of Russia (partial publication). 20 May.
- LAMBER-ABDELGAWARD, E. 2008. **The Execution of the judgments of the European Court of Human Rights**. 2nd ed. Strasbourg: Council of Europe Publishing.
- MEDVEDEV, D. 2010. **Russia will not let the ECtHR to deliver judgments which change its laws**. RIA- Novosti, 11 Dec.
- \_\_\_\_\_. 2011. **Speech at the St Petersburg International Legal Forum**. Official website of the President of Russia (partial publication). 20 May.
- PUTIN, V. 2011. **Minutes of the reporting session of the Government to the Parliament for the year 2010**. Available at: <<http://premier.gov.ru/events/news/14898/>>. Last accessed on: 10 Aug. 2011.
- RUSSIA. 1998. **Regulation on the Agent of the Russian Federation before the European Court of Human Rights – Deputy Minister of Justice of the Russian Federation**. No. 310, 9 Mar.
- \_\_\_\_\_. 2001. **Criminal Procedure Code of the Russian Federation, No. 174-FZ**. 18 Dec. (as amended).
- \_\_\_\_\_. 2002a. **Commercial Procedure Code of the Russian Federation, No. 95-FZ**. 24 July (as amended).
- \_\_\_\_\_. 2002b. **Civil Procedure Code of the Russian Federation, No. 138-FZ**. 14 Nov. (as amended).
- \_\_\_\_\_. 2008a. **Decree of the Head of the Council of the Federation of the Federal**

**Assembly of the Russian Federation on the approval of the Regulation on the Centre of monitoring of legislation and practice of law application within the Council of the Federation of the Federal Assembly of the Russian Federation.** No. 173rp-SF, 25 Apr.

\_\_\_\_\_. 2010a. Federal Law no. 68-FZ “**On Compensation for Violation of the Right to a Trial within a Reasonable Time or the Right to Enforcement of a Judgment within a Reasonable Time**”, 30 Apr.

\_\_\_\_\_. 2010b. Bill “**On the introduction of amendments to the Civil Procedure Code of the Russian Federation**”. No. 407795-5, 16 July.

\_\_\_\_\_. 2011a. Federal Law no. 3-FZ “**On the Police**”, 7 Feb.

\_\_\_\_\_. 2011b. Federal Law no. 67-FZ “**On the Introduction of Amendments to the Law of the Russian Federation “On Psychiatric Assistance and Related Guarantees to the Rights of Citizens” and the Civil Procedure Code of the Russian Federation**”, 6 Apr.

\_\_\_\_\_. 2011c. President of Russia. Decree no.657 “**On the monitoring of the application of law in the Russian Federation**”, 20 May.

\_\_\_\_\_. 2011d. State Duma. Committee on the Constitutional Legislation and State-Building. Explanatory Note to the Bill “**On the Introduction of amendments to certain legislative acts of the Russian Federation**”. 16 June

\_\_\_\_\_. 2011e. Anatoly Torshin. Bill “**On the Introduction of amendments to certain legislative acts of the Russian Federation**”. 16 June.

ULITSKY, I. 1993. **Legal and Constitutional Basis for the Development of the Rule of Law in Russia**. *Bulletin of the Australian Society of Legal Philosophy*, v. 18, p. 69-88.

UNITED NATIONS. 1969. **Vienna Convention on the Law of Treaties**. Vienna, 23 May.

ZORKIN, V. 2010. **The Limits to Flexibility**. *Russian Gazette*, no. 5325 (246), 29 Oct.

## Jurisprudence

EUROPEAN COURT OF HUMAN RIGHTS. 1998. Judgment (Article 50) of 1 April, **Akdivar v. Turkey**, application No. 99/1995/605/693.

\_\_\_\_\_. 2004. Judgment of 22 June, **Broniowski v. Poland**, application No. 31443/96.

\_\_\_\_\_. 2005. Grand Chamber. Judgment of 6 October, **Hirst v. the United Kingdom (no. 2)**, application No. 74025/01.

\_\_\_\_\_. 2006. Judgment of 13 April, **Fedotova v. Russia**, application No. 73225/01.

\_\_\_\_\_. 2007. Judgment of 18 January, **Kot v. Russia**, application No. 20887/03.

\_\_\_\_\_. 2008. Judgment of 27 March, **Shtukaturv v. Russia**, application No. 44009/05.

\_\_\_\_\_. 2009a. Judgment of 8 January, **Kulkov and others v. Russia**, applications No. 25114/03, 11512/03, 9794/05, 37403/05, 13110/06, 19469/06, 42608/06, 44928/06, 44972/06 and 45022/06.



- \_\_\_\_\_. 2009b. Judgment of 15 January, **Burdov v. Russia (no. 2)**, application No. 33509/04.
- \_\_\_\_\_. 2009c. Decision of 29 January, **OAO Neftyanaya Kompaniya Yukos v. Russia**, application No. 14902/04.
- \_\_\_\_\_. 2009d. Decision of 30 June, **Georgia v. Russia (no. 1)**, no. 13255/07.
- \_\_\_\_\_. 2010a. Grand Chamber. Decision of 1 March 2010, **Demopoulos and Others v. Turkey**, applications No. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04, 21819/04.
- \_\_\_\_\_. 2010b. **Georgia v. Russia (no. 2)**, application No. 38263/08 (no court documents available yet).
- \_\_\_\_\_. 2010c. Decision of 23 September 2010, **Nagovitsyn and Nalgiyev v. Russia**, applications No. 27451/09 and 60650/09.
- \_\_\_\_\_. 2010d. Judgment of 7 October 2010, **Konstantin Markin v. Russia**, application No. 30078/06.
- RUSSIA. 2007. Plenum of the Supreme Commercial Court of the Russian Federation. 12 March, **on the application of the Commercial Procedure Code of the Russian Federation in the case of the review on the basis of newly discovered circumstances of legally binding judicial acts**, Judgment, No. 17, para. 10.
- \_\_\_\_\_. 2008b. Federal Commercial Court of the Moscow Region. 7 October, **Case No. A40-16731/00-97-56**, Judgment.
- \_\_\_\_\_. 2009a. Constitutional Court of the Russian Federation. 15 January, **On the refusal to consider the applications lodged by Markin Konstantin Aleksandrovich claiming a violation of his constitutional rights by the provisions of Articles 13 and 15 of the Federal Law “On State Allowance to Citizens Having Children, Articles 10 and 11 of the Federal Law “On the Status of Military Servants”, Article 32 of the Regulations on the Procedure for Military Service and clauses 35 and 44 of the Regulations on the granting and payment of state allowances to citizens having children**. Ruling, No. 187-O-O/2009.
- \_\_\_\_\_. 2009b. Constitutional Court of the Russian Federation. 27 February, **In the case concerning the review on the constitutionality of several provisions of Articles 37, 52, 135, 222, 284, 286 and 3791 of the Civil Procedure Code of the Russian Federation and part 4 of Article 28 of the Law of the Russian Federation “On Psychiatric Assistance and Related Guarantees to the Rights of Citizens” further to the applications of Messrs. Yu.K.Gudkova, P.V.Shtukaturov and M.A. Yashina**, Judgment, No. 4-P/2009.
- \_\_\_\_\_. 2009c. Federal Commercial Court of the Central Region. 26 January, **Case No. A14-3596/2008/19/20-18**, Judgment.
- \_\_\_\_\_. 2010c. Constitutional Court of the Russian Federation. 2010. 26 February, **In the case concerning the review of the constitutionality of paragraph two of article 392 of the Civil Procedure Code of the Russian Federation further to the applications of Messrs. A.A. Doroshok, A.E. Kot, and E.Yu. Fedotova**, Judgment, No. 4-P.

## NOTES

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1. Judgments of the Inter-American Court of Human Rights provide detailed specification of the State actions required to repair harms occasioned by violations of the American Convention on Human Rights. Apart from monetary compensation, this may include, *inter alia*, symbolic measures, conducting an effective investigation into the abuses at issue and bringing the perpetrators to justice, altering existing legislation, and positive measures to ensure the non-repetition of similar violations. (CAVALLARO; BREWER, 2008, p.785).
2. However, a trend towards the Court giving indications of remedial measures required has more recently been observed, particularly since the introduction of the pilot judgment procedure.
3. According to Rule 61 of the Rules of the Court, a pilot judgment procedure may be initiated by the Court when «the facts of an application reveal in the Contracting Party concerned the existence of a structural or systemic problem or other similar dysfunction which has given rise or may give rise to similar applications». A judgment delivered as a result of such a procedure shall identify the nature of the problem or dysfunction at hand and indicate the remedial measures that need to be undertaken by the State concerned (EUROPEAN COURT OF HUMAN RIGHTS, 2012).
4. It should be noted, however, that most of the applications submitted against Russia (about 98%) are found by the Court to be inadmissible (EUROPEAN COURT OF HUMAN RIGHTS, 2010a, 2010b, 2010c, 2010d).
5. State commercial courts are often referred to as “arbitrazh” courts. However, it is important to distinguish State “arbitrazh” courts from arbitration and arbitral tribunals.
6. According to Article 117(1.a) of the Russian Constitution the Government shall annually present the State Duma with a report on the results of its activities. The State Duma has powers to put questions to the Government which should be addressed in such report.
7. According to Article 43 of the Convention,» [w]ithin a period of three months from the date of the judgment of the Chamber, any party to the case may, in exceptional cases, request that the case be referred to the Grand Chamber». In the rare case when such a request is accepted, the Grand Chamber decides the case afresh and delivers a new judgment. If such request is rejected, the judgment of the Chamber enters into force.
8. Article 15 of the Russian Constitution reads as follows:

“Article 15 (1) The Constitution has supreme legal force and direct effect, and is applicable throughout the entire territory of the Russian Federation. Laws and other legal acts adopted by the Russian Federation may not contravene the Constitution.

(2) Organs of state power and local self-government, officials, citizens and their associations must comply with the laws and the Constitution.

[...]

(4) The commonly recognized principles and norms of the international law and the international treaties of the Russian Federation are a component part of its legal system. If an international treaty of the Russian Federation stipulates other rules than those stipulated by the law, the rules of the international treaty apply”. (Unofficial translation by International Constitutional Law. Available at <[http://www.servat.unibe.ch/icl/rs00000\\_.html](http://www.servat.unibe.ch/icl/rs00000_.html)>. Last accessed: 10 Aug. 2011).
9. “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty” (UNITED NATIONS, 1969)
10. “Of all the Eastern European nations attempting to change the structure of their societies through law, Russia faces the greatest challenges. The absence of an independent legal culture, the temptation to fall back on a system of decrees promulgated from the top, is centuries old. The legal reforms of 1864 onward attempted to initiate a counter-trend. That trend proved to be too insecurely established to survive into the brutalities, lawlessness and summary “justice” of the Civil War, of the temporary military governments of various regions and even of self-proclaimed republics during that war. The Red and White Terror led to [...] ruthless imposition of discipline in the Party, the Soviets and the Armed Forces as a necessary foundation for the exercise of power, allegedly in the interests of direct popular democracy. The tradition of perceiving law as synonymous with power and as an autocratic command or set of commands from above remained too strong. The idea that many take for granted in developed legal systems, that governments are bound by law, is only now beginning to be articulated” (ULITSKY, 1993, p. 70).

## RESUMO

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Nos últimos anos, a questão da execução das decisões da Corte Europeia de Direitos Humanos pela Rússia ganhou destaque não apenas na própria Rússia, mas também em todo o sistema de direitos humanos europeu. Neste artigo, as autoras analisam diversos desafios que a Rússia enfrenta com relação à execução das decisões judiciais da Corte, já que estas se referem tanto a medidas individuais quanto gerais, e também às conquistas do país nessa área. Em particular, as autoras examinam o que foi apresentado pela imprensa como um conflito entre a Corte de Estrasburgo e a Corte Constitucional da Rússia.

## PALAVRAS-CHAVE

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Corte Europeia de Direitos Humanos – Execução das decisões da Corte EDH – Rússia

## RESUMEN

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En los últimos años, el tema de la ejecución de las sentencias del Tribunal Europeo de Derechos Humanos por parte de Rusia adquirió una importancia central no sólo para Rusia misma sino para todo el sistema europeo de derechos humanos en general. En el presente artículo, las autoras analizan los diversos desafíos que enfrenta Rusia respecto de la ejecución de las sentencias del Tribunal en lo atinente a medidas tanto individuales como generales, y los logros del país en este sentido. En particular, las autoras examinan lo que en la prensa se ha descrito como una riña entre el Tribunal de Estrasburgo y la Corte Constitucional de Rusia.

## PALABRAS CLAVE

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Tribunal Europeo de Derechos Humanos – Ejecución de sentencias del TEDH – Rusia